

# **Cladding Regulation**

Frequently asked questions for Councils

## New laws: reducing risk to life and property

The tragic fire at the Grenfell Tower in London in 2017 and the Lacrosse Building fire in Melbourne in 2014 have highlighted public safety risks posed by inappropriate use of certain combustible products on the external areas of buildings.

To address the problem, the NSW Government developed a 10-point action plan that included the creation of a Cladding Taskforce, led by the Department of Finance, Services and Innovation, and including Fire and Rescue NSW (FRNSW) and the Department of Planning and Environment.

A priority of the Taskforce is the identification of buildings with combustible cladding to ensure affected buildings are safe. This is being undertaken in collaboration with building owners and occupants, industry and councils.

As a Taskforce member, FRNSW has visited and inspected over 2,000 sites identified by local councils, visual observations by FRNSW officers, and an analysis of development approvals by the Department of Planning and Environment.

Another initiative under the 10-point plan is the implementation of a new law in the form of an amendment to the Environmental Planning and Assessment Regulation 2000 (the Cladding Regulation). The new regulation introduces a requirement for owners of certain residential and public buildings to register their building on a NSW Government portal. For registration purposes, owners don't have to be certain about the level of combustibility of the cladding on their building.

The identification of these buildings will enable FRNSW to educate the occupants about fire prevention, and to respond appropriately in the event of a fire. Registration also assists councils in their role as building control authorities to determine what further actions (if any) are necessary.

It is important to note that the presence of external combustible cladding on a building does not necessarily mean it is a fire hazard.

In addition, a product use ban on certain types of combustible cladding was recently issued by the Commissioner for Fair Trading. The product use ban is primarily aimed at preventing the use of specific cladding products on buildings in the future. More information regarding the Building Products (Safety) Act 2017 and the product use ban is available from the NSW Fair Trading website.



## Does the cladding regulation apply to your building?

The new regulation applies to the following types of buildings, two storeys or higher, that have external combustible cladding:

- Residential apartment buildings.
- Other types of residential buildings where people sleep, for example, hotels, boarding houses, backpackers, student accommodation.
- Aged-care buildings, hospitals, day surgeries and public assembly buildings, such as theatres, cinemas, schools and churches. The regulation also applies to a single dwelling within one of these buildings, for example, a caretaker's residence inside an aged-care facility or school.

This regulation does not currently apply to offices, shops, warehouses, carparks, factories and other commercial buildings although they may be included at a later stage. The regulation also does not apply to houses.

The new regulation applies to buildings that have the following types of external combustible cladding on any external walls or other external areas of the building:

- Metal composite panels including products that use aluminium, zinc or copper outer layers and a core material, or
- Insulated cladding systems including systems comprised of polystyrene, polyurethane and polyisocyanurate.

Owners of the above types of buildings with the relevant type of cladding will need to register the building on the NSW Government portal between 22 October 2018 and 22 February 2019.

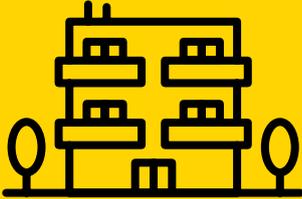
The new regulation also applies to buildings even if they have:

- a development consent
- a complying development certificate
- a construction certificate
- an occupation certificate
- an annual fire safety statement
- a cladding assessment
- a fire safety order
- a letter from the NSW Cladding Taskforce about the building
- notification of a product use ban issued by the Commissioner of Fair Trading.

It also applies to government authorities who own buildings within the scope of the regulation.

## THE NEW REGULATION APPLIES TO<sup>1</sup>:

### Class 2



Apartment buildings two storeys or higher.

### Class 3



Other accommodation buildings where people sleep, two storeys or higher.

Examples include: hotels, motels, boarding houses, backpackers, residential parts of schools or accommodation buildings for children, the elderly or people with a disability.

### Class 9<sup>2</sup>



Buildings two storeys or higher that are:

Aged-care buildings, health-care buildings, hospitals, and day surgeries.

Public assembly buildings where people gather for social, theatrical, political, religious or civil purposes.

Examples include schools, universities, childcare centres, sporting facilities, cinemas, night clubs, public transport buildings.

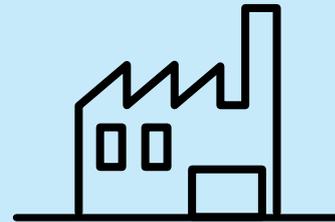
## IT DOES NOT APPLY TO:

### Class 1 & 10



Houses and non-habitable buildings or structures.

### Classes 5, 6, 7 & 8



Offices, shops, factories, warehouses, carparks, commercial buildings.

*(Note: these buildings may be included later).*

[Read more about building classifications at the Australian Building Codes website.](#)

<sup>1</sup> The Cladding Regulation targets buildings with sleeping occupants, and public buildings, two storeys above the ground. The aim is to capture buildings with external combustible cladding that could contribute to fire spread.

<sup>2</sup> Class 9 includes any 'Class 4 part', which is a dwelling in a Class 9 building.

## What is external combustible cladding?

Certain types of cladding can burn rapidly if it catches alight. Problems with metal composite panels and insulated cladding systems relate mainly to multi-storey buildings because of the potential for rapid fire spread via the external areas of the building. These products can ignite easily and melt at relatively low temperatures.

It is important to note that the presence of external combustible cladding on a building does not necessarily mean it is a fire hazard.

### Metal Composite Panels

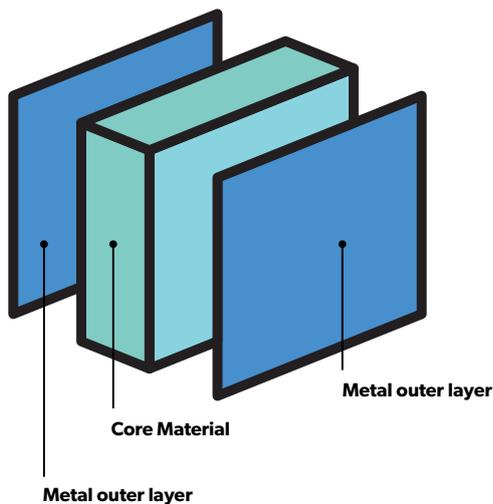
Metal composite panels (MCP) are part of a cladding system on the external areas of buildings and can be a variety of colours, or they can be grey or colourless.

MCP can be different shapes and can be used in a variety of ways, such as covering a part of a wall or covering the whole wall, or as a decorative feature around windows and doors, on balconies, awnings, and signage on walls.

MCP products are sandwich-type panels, usually between 2-5mm thick, that consist of two metal outer layers and a core material. MCP includes products with outer layers of copper and zinc but the most common are products that use aluminium as the outer layer. These are referred to as aluminium composite panels (ACP).

The panel cores are made of a variety of materials, including polyethylene (PE), which may vary considerably in terms of their combustibility and ability to spread fire.

The use of MCP has become more common in the past 10 years, however, ACP has been in use as a building product since the late 1980s, so it may be present on older buildings. Common industry names for some types of ACP include ACP PE and ACP FR.

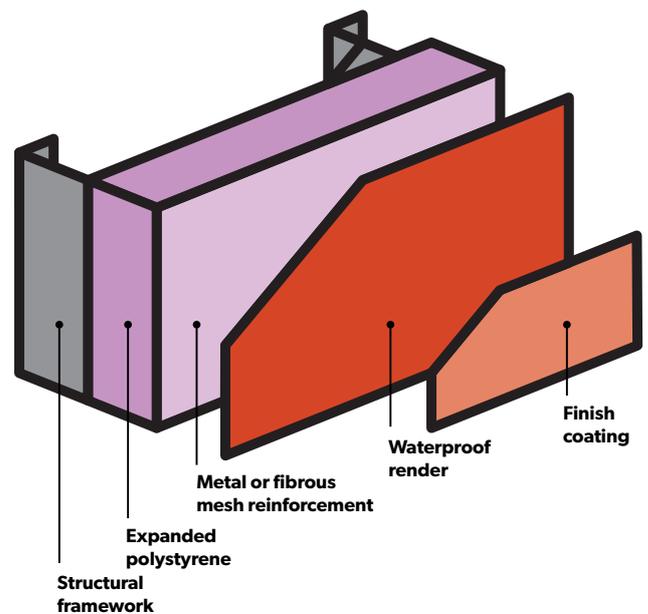


### Insulated Cladding Systems

Insulated cladding systems are external wall systems comprised of bulk foam insulation that is fixed to a structural frame and then sealed, rendered and painted.

These systems are lightweight and have good thermal insulating properties because they use a thick layer of insulating foam such as polystyrene, polyurethane and polyisocyanurate.

The systems can be difficult to identify visually because they can look like rendered brick or concrete. However, tapping on the surface of these systems often produces a distinct sound such as a hollow thud, that is unlike the sound of tapping brick or concrete.



## What does external combustible cladding look like?

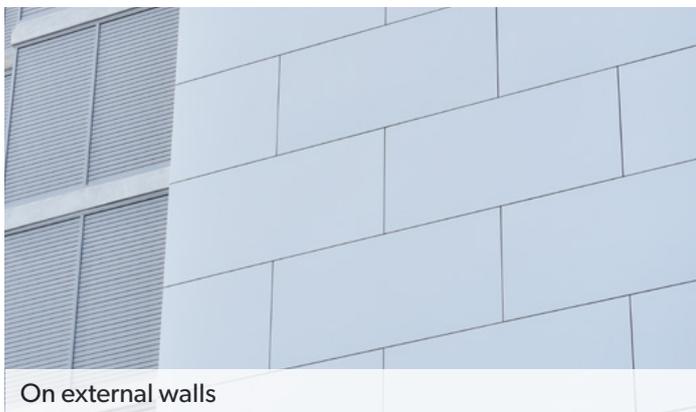
Cladding comes in a variety of colours, or it can be grey and colourless. It can be used in different ways, such as around windows and doors, on balconies, covering a whole wall, or part of it. These images are indicative of what cladding may look like and are not intended as a complete guide. The presence of external combustible cladding does not necessarily mean it is a fire hazard.



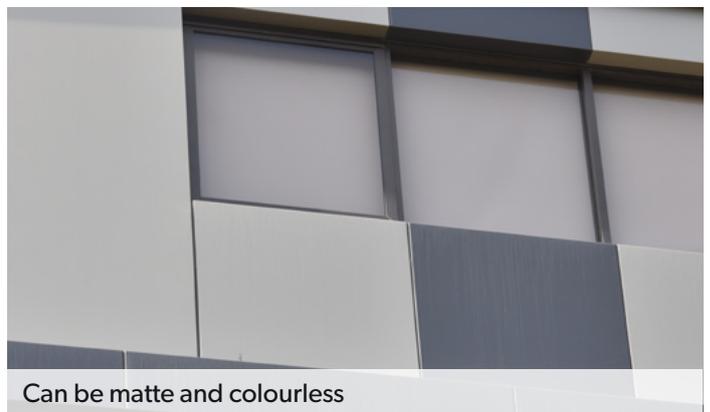
On balconies



Around windows



On external walls



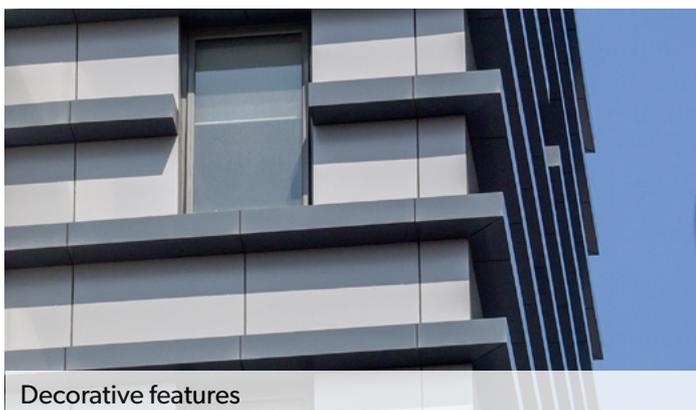
Can be matte and colourless



On awnings



Palings



Decorative features



Balcony walls

## What is the role of councils under the cladding regulation?

Councils have an important role to play to support the implementation of the new cladding regulation. To support the role of councils the Government, through the Cladding Taskforce, will provide councils with information from the registration process.

This information will supplement council's own records and will include general information about the individual building such as the number of storeys, a description of the cladding and its location on the building. Access to the information will make it easier for councils to determine whether to use their compliance and enforcement powers as the primary building control authority.

Councils can then decide on their next steps. For instance, councils can undertake further investigations, which could lead to issuing fire safety orders for remedial action to address any risks associated with the cladding. The registration information should also help councils to determine which buildings to prioritise.

## What powers of compliance and enforcement do authorities have?

Councils have broad existing powers for compliance and enforcement under the *Environmental Planning and Assessment Act 1979*. FRNSW also has enforcement powers, however, these powers are limited compared with council powers. The Department of Planning and Environment also has enforcement powers, but these relate only to development consents issued by or on behalf of the Minister for Planning.

The regulation puts new requirements on building owners to register their buildings through an online portal. Additional compliance and enforcement powers are provided to ensure this occurs.

Under the new regulation, councils and FRNSW will have additional powers and responsibilities to:

- Direct owners to register their building if they have identified a building with external combustible cladding that is not registered. Such a direction may require registration earlier than the prescribed time frame in the regulation.
- Notify the Department of Planning and Environment if they issue a direction. A simple online process for these notifications will be developed. Further information on this will be provided in the coming months.
- Issue penalties of up to \$1500 for individuals or \$3000 for corporations if they fail to register their building. Further penalties can be issued if building owners or corporations fail to respond to directions. These are \$3000 and \$6000 respectively.

## What possible pathways are there for rectification?

Where it is necessary to undertake rectification works associated with external combustible cladding, there are several pathways that could be considered. For example, councils have discretion on whether to issue fire safety orders and can determine the terms that are appropriate to form part of any order. This allows flexibility for specific circumstances on a case-by-case basis. Rectification works could also be undertaken via the development approval process.

## What is the relationship between the cladding regulation and the product use ban issued by the Commissioner for Fair Trading?

The ban and the regulation are complementary. The Department of Finance, Services and Innovation and the Department of Planning and Environment have worked collaboratively to develop these reforms. The purpose of the cladding regulation is to identify new (those that are not occupied when the regulation commences) and existing buildings that may contain a range of combustible cladding products that could be a fire safety risk, and which may need further assessment.

The product use ban is primarily aimed at preventing the use of specific cladding products on buildings in the future. More information regarding the *Building Products (Safety) Act 2017* and the product use ban is available from the NSW Fair Trading website.

## What role does the Cladding Taskforce play in relation to councils?

The NSW Cladding Taskforce is an interagency group chaired by the Secretary of the Department of Finance, Services and Innovation and includes agencies such as the Department of Planning and Environment, FRNSW and the Office of Local Government.

The Taskforce is a forum that allows the agencies to coordinate their actions including the use of their statutory functions. Generally, the actions of its member agencies in relation to councils are coordinated through the Taskforce.

## When do building owners need to register?

The new regulation requires owners to register existing buildings on a NSW Government portal between 22 October 2018 and 22 February 2019. For new buildings, the deadline for registration will be four months after the building is first occupied.

## How do councils find out which buildings are registered?

Owners will register their buildings on an online NSW Government system. Options are being developed to regularly transmit this information to councils and FRNSW.

The intention is to provide frequent information to councils rather than wait until the end of the registration period.

## Does the regulation affect any existing fire safety orders that council has issued on buildings with cladding?

No. Building owners must still register their building even if it is subject to a fire safety order.

## What will the NSW Government be doing to ensure building owners know about these requirements?

The NSW Government will launch a public awareness campaign before registrations are due.

The Government, through the Taskforce, has worked to raise public awareness of the cladding issue before making this regulation. The Government also wrote directly to more than 5,000 building owners, and managers of buildings, identified in an audit, to provide information about the actions they should take to ensure the safety of their building.



## Why did the Government remove the proposed cladding statement from the final regulation?

The draft regulation exhibited last year contained a proposal to require building owners to engage a properly qualified person to undertake an inspection and technical assessment of registered buildings. It was proposed that the owner would then rely on this assessment to complete a cladding statement about the fire risk of the cladding and any actions necessary to address the risk.

Since then, there has been a tightening in the professional indemnity insurance market, which has the potential to affect the availability of experts to carry out the work. To help deal with issues around the supply of experts, mandatory assessments have been removed from the regulation. These may be considered at a later stage.

The insurance challenges faced by the industry are complex and the Government is in active discussions with insurers on the matter. However, this will not impact the requirement for buildings to be registered. The registration process will proceed and will assist authorities to undertake necessary actions to help mitigate risks posed by the presence of external combustible cladding.

For more information on the cladding regulation see the Department of Planning and Environment cladding webpage [www.planning.nsw.gov.au/cladding](http://www.planning.nsw.gov.au/cladding)

For more information on fire safety and external wall cladding, the NSW Cladding Taskforce and building product safety see NSW Fair Trading's website at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

For tips on high-rise fire safety see Fire & Rescue NSW's website [www.fire.nsw.gov.au](http://www.fire.nsw.gov.au)

